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No. 91-1483

In The

Supreme Court of the United States

October Term, 1991

STATE OF IDAHO,

Petitioner,

v.

UNITED STATES DEPARTMENT OF ENERGY,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

REPLY MEMORANDUM FOR THE PETITIONER

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STATE OF IDAHO,

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UNITED STATES DEPARTMENT OF ENERGY,

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Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

REPLY MEMORANDUM FOR THE PETITIONER

The Ninth Circuit has effectively annulled key provisions of the Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10101 *et seq.* ("NWPA"). At stake are the limitations imposed by Congress to any proposal by the Department of Energy to store vast amounts of spent nuclear fuels at a Federal site; namely, the duty to first prepare a detailed statement on the impacts to the environment that may arise from any such proposal and the corollary duty to obtain the consent of the affected State. 42 U.S.C. §§ 10155(c)(1) and 10155(d)(6).

In our petition, we showed that the Ninth Circuit's holding – that the Energy Department may store 300

metric tons of spent nuclear fuels at the Idaho National Engineering Laboratory without regard for the NWPA because the action is authorized under a pre-existing contract with the Public Service Company of Colorado – contravenes its own precedent that agencies of the Federal Government must comply with the requirements of intervening legislation in carrying out or completing previously authorized actions. *See, e.g., Port of Astoria, Oregon v. Hodel,* 595 F.2d 467, 477 (9th Cir. 1979); *Jicarilla Apache Tribe of Indians v. Morton,* 471 F.2d 1275, 1282-83 (9th Cir. 1973). The relevance of that precedent, established in other circuits as well,[1] is buttressed by this Court's admonition that immunity from the requirements of intervening legislation should not be gained through forehanded contracts. *Fleming v. Rhodes,* 331 U.S. 100, 107 (1947); *see also Thorpe v. Housing Authority of City of Durham,* 393 U.S. 268, 279 (1969).

We also showed that the Ninth Circuit's departure from prevailing precedent cannot be squared with the NWPA's text and history. Together, they command that major actions involving the storage of spent nuclear fuels at any one Federal site may take place only if the Energy Department first prepares a thorough review of the impacts to the environment from that action and obtains the consent of the affected State. *See* 42 U.S.C.

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[1] *See, e.g., Monroe County Conservation Council v. Volpe,* 472 F.2d 693, 698-99 (2nd Cir. 1972); *Arlington Coalition on Transportation v. Volpe,* 458 F.2d 1323, 1330-35 (4th Cir. 1972); *Calvert Cliffs' Coordinating Committee v. U.S. Atomic Energy Commission,* 449 F.2d 1109, 1129 (D.C. Cir. 1971).

§§ 10155(c)(1) and 10155(d)(6); H.R. Rep. No. 491, 97th Cong., 2d Sess. pt. 1, at 38-41 (1982).

In response, respondents seek to minimize the importance of the question presented and the waywardness of the court of appeals' decision. Their efforts fall short of the mark.

1. Respondents assert that the decision is without consequence, because "no contracts were entered into [between the Energy Department and utilities] . . . during the seven years in which such contracts were authorized" under the NWPA. Federal Respondents' Brief in Opposition, at 8 (May 1992) ("Fed. Br. in Opp."); *see also,* Intervenor's Brief in Opposition, at 6 (April 1992) ("Interv. Br. in Opp."). That is a classic *non sequitur,* for the question presented is whether the NWPA's provisions requiring environmental review and State consent apply to *all* major federal actions to store spent nuclear fuels at a Federal site, regardless of when or how authorized. Petition for Writ of Certiorari, at i (March 1992) ("Pet.").

This case is of recurring importance because the Energy Department asserts that it has authority to store civilian spent nuclear fuels at Federal sites independent of contracts entered into under the NWPA. As a recent report reveals: "DOE is contractually bound to receive additional Fort St. Vrain fuel *and other fuels.*" Dep't of Energy, *Draft Spent Fuel and Waste Management Technology Development Plan,* at 9 (April 24, 1992) (emphasis added).[2]

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[2] The Energy Department's belated acknowledgement is surprising, for it repeatedly resisted in this and other cases our

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Looking forward, nearly 72,000 metric tons of spent nuclear fuels produced by utilities will have accumulated by the end of this decade, and over 60 of the 83 facilities operated by utilities for storing those radioactive fuels will have reached capacity by 1998. Pet., at 8-9, *citing, Pacific Gas & Electric Company v. State Energy Resources Conservation,* 461 U.S. 190, 195 (1983) and *Managing the Nation's Commercial High-Level Radioactive Waste,* Appendix B. at 258 (Office of Technology Assessment OTA-0-171 March 1985). These observations take on added significance when Section 302 of the NWPA is consulted: it requires the Energy Department to "take title" to civilian-produced spent nuclear fuels on January 31, 1998 and "dispose" of those fuels in a monitored retrievable storage facility or permanent repository. 42 U.S.C. §§ 10222(a)(1) and (a)(5); *see also,* 42 U.S.C. §§ 10101, 10107, 10138, 10161, 10194, 10251, and 10269. However, it "is highly unlikely" the Department will have started building the storage facility or repository by then. General Accounting Office, *Nuclear Waste: Operations of Monitored Retrievable Storage Facility is Unlikely by 1998,* at 3 (GAO/RCED-91-194 September 1991).

(Continued from previous page)

requests to discover evidence about its obligations to store spent nuclear fuels at Federal sites. However, after observing "that there may be a great number of documents contrary to the agency's position[,]" a federal court in a related case recently ruled that the Energy Department must be more forthcoming and ordered it to produce the evidence. *Public Service Company of Colorado v. Andrus,* Civil Nos. 91-0035-S-HLR and 91-0054-S-HLR, Order on Pending Discovery and Procedural Motions, at 6 & 10 (D. Idaho May 7, 1992). The order is set out in the Supplemental Appendix to this memorandum.

In a few years, then, the Energy Department may try to use existing Federal sites to store the vast amounts of spent nuclear fuels it will own on January 31, 1998. The appellate court's decision, by nullifying the heretofore applicable conditions of the NWPA, leaves States unprotected from such action.

This Court also has not hesitated to exercise its jurisdiction "to review the exercise of the grave [judicial] power of annulling an Act of Congress." *United States v. Gainey*, 380 U.S. 63, 65 (1965). While that observation is in the context of the judiciary passing upon the constitutionality of a statute, the practical effect of the decision in this case is the same. The Ninth Circuit's opinion imposes a sunset on components of the NWPA that according to the statute's text are supposed to govern the federal government's interim storage of spent nuclear fuels. This outcome is precisely the sort of exercise of judicial power that calls for this Court's review under Section 1254(1) of Title 28 to the United States Code.

2. Turning to the merits of the controversy,[3] the briefs in opposition fail to even mention the Energy Department's statutory duties to prepare a statement on

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[3] The federal respondent notes that several of its defenses were not resolved by the court of appeals. Fed. Br. in Opp., at 6 n.1. However, those defenses have nothing to do with this petition. The question presented is whether the NWPA's provisions respecting environmental review and State consent apply to the Energy Department's proposal to store vast amounts of spent nuclear fuels at the Idaho National Engineering Laboratory. If these requirements apply to that proposal, the merit (or lack thereof) of the defenses noted by the federal respondent can be taken up on remand.

the impacts to the environment and obtain the consent of the affected State before storing 300 or more metric tons of spent nuclear fuels at any one Federal site. Instead, they cite to the subsections of the statute that authorize the Energy Department to enter into contracts to store spent nuclear fuels on behalf of utilities, as if the grant of authority contained in those provisions define the reach of all other aspects of Part B of the NWPA. Fed. Br. in Opp., at 6-7; Interv. Br. in Opp., at 5.

Such a defense of the court of appeals' decision is nothing more than a diversionary tactic, for as we have explained, the requirements that the Energy Department first prepare a statement on the impacts to the environment and obtain the consent of the affected State apply *whenever* a decision is made to store 300 or more metric tons of spent nuclear fuel at any Federal site. Pet., at 12-20. Section 135(c)(1) states that "[t]he provision of 300 or more metric tons of storage capacity at any one Federal site under subsection (a)(1)(A) of this section shall be considered to be a major Federal action requiring preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. § 4332[2][C])." 42 U.S.C. § 10155(c)(1). Section 135(d)(6) sets in motion the requirements for State consent "[u]pon [the Department] deciding to provide an aggregate of 300 or more metric tons of storage capacity under subsection (a)(1) at any one site." 42 U.S.C. § 10155(d)(6). The provisions simply lack any words that limit their reach to just the interim storage of

spent nuclear fuels under contracts entered into pursuant to other subsections of the NWPA.[4]

Respondents further defend the appellate court's opinion by attacking a strawman, averring that the petition seeks to retroactively apply the NWPA. Fed. Br. in Opp., at 6-7; *see also,* Interv. Br. in Opp., at 7-8. Our position, however, is a prospective one – the statute applies to any storage of spent nuclear fuels that remains to be provided by the Energy Department. Pet. 12-20. Our position that this case involves the prospective application of the statute follows directly from the Ninth Circuit's holding in *Port of Astoria* that if major federal action remains to be performed under a pre-existing contract, the performance of those obligations are subject to the requirements of intervening statutes – in that case, section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. § 4332(2)(C) ("NEPA"). *Port of Astoria,* 595 F.2d at 477.

Despite the federal respondent's protestations to the contrary (Fed. Br. in Opp. at 7-8), the appellate court's departure in this case from prior precedent cannot be explained away by differences in the two statutory schemes. The broad language of section 102(2)(C) of NEPA is part and parcel of the NWPA, to wit: "[t]he provision of 300 or more metric tons of storage capacity at any one Federal site . . . shall be considered to be a major Federal action under section 102(2)(C) of the National

---

[4] Subsection (a)(1) of the NWPA, referenced in each provision, authorizes the Energy Department to provide up to 1900 metric tons of capacity for the storage of spent nuclear fuels. 42 U.S.C. § 10155(a)(1).

Environmental Policy Act." 42 U.S.C. § 10155(c)(1). This Court's review, accordingly, could dispel the confusion that arises from the court of appeals' unwillingness to provide a uniform reading to identical statutory mandates.

The departure from precedent also cannot be explained away by respondents characterizing the NWPA as limited rather than as comprehensive legislation. Fed. Br. in Opp., at 7-8. Every other federal court to consider the question has concluded that the statute sets out a "comprehensive scheme for the disposal of SNF [spent nuclear fuels] and other high-level radioactive waste generated by civilian nuclear power reactors." *See, e.g., General Electric Uranium v. Department of Energy*, 764 F.2d 896, 898 (D.C. Cir. 1985); *see also State of Tennessee v. Herrington*, 626 F. Supp. 1345, 1346 (M.D. Tenn.), *rev'd on other grounds*, 806 F.2d 642 (6th Cir. 1986).[5]

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[5] Whether the contract with Public Service Company of Colorado "expired" in 1987, and had to be renewed under the provisions of the NWPA in 1988, also is worthy of this Court's review. Pet., at 20 n.10. The Ninth Circuit's resort to parol evidence is unprecedented given it already had concluded that the original contract contained a sunset of 1987, and the parties had to enter into a new agreement the next year. Pet., at App. 3 and 4 ("all eight of the contracted fuel segments would not be delivered prior to January 1, 1987 – the term set by the original contract" and "[o]n May 11, 1988, DOE and Public Service agreed to an additional modification to the contract").

Respondents also are less than forthright in averring that we failed to present any evidence contrary to what was considered by the court of appeals. Fed. Br. in Opp., at 7, n.2. Our motion to discover evidence was denied by the court of

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3. The Ninth Circuit's decision, moreover, unwittingly sanctions a result that contravenes the NWPA's admonition that "the persons owning or operating civilian nuclear reactors have the primary responsibility for providing interim storage of spent nuclear fuel from such reactors" and its charge that utilities do so "by adding new onsite storage capacity in a timely manner where practical." 42 U.S.C. § 10151(a)(1). As a federal district court recently observed in a related case:

> [I]n earlier proceedings which led to this court's order of May 7, 1991, the DOE represented that the storage facility at INEL was the *only* storage facility available which could accept the spent nuclear fuel from Fort St. Vrain. The court is of the opinion that DOE may have acted in bad faith by making this representation. As the court now knows, Public Service Company (which operates the Fort St. Vrain nuclear facility) applied to the Nuclear Regulatory Commission ("NRC") in June of 1990, to build an on-site storage facility at Fort St. Vrain. The NRC authorized the construction of such a facility on February 1, 1991. Construction began immediately, and it was completed in October of 1991. In November of 1991, the NRC issued a license to Public Service Company to operate the storage facility for 20 years.

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appeals. Not surprisingly, "[t]he record does not contain any evidence contrary to the parties' expressed understanding" (Pet., at App. 10) because we were denied the opportunity to discover such evidence.

> The DOE should have been more forthcoming with the court with respect to the storage facility being constructed at Fort St. Vrain. These facts bolster Andrus's position that discovery is warranted to ensure that the full administrative record is before the court[.]

Public Service Company of Colorado, Order on Pending Discovery and Procedural Motions, at 8-9 (*See* Supplemental Appendix at 8-9). In other words, the Energy Department apparently is more concerned about hiding facts that show it does not need to store the utility's spent nuclear fuels than it is with honoring the will of Congress as expressed in the NWPA.

For the foregoing reasons, and those stated in the petition, we respectfully submit that the petition for a writ of certiorari should be granted.

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May 1992

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

PUBLIC SERVICE COMPANY OF COLORADO, Plaintiff, v. CECIL D. ANDRUS, individually and as Governor of the State of Idaho, Defendant.	CIVIL NO. 91-0035-S-HLR (consolidated with Civil No. 91-0054-S-HLR) **ORDER ON PENDING DISCOVERY AND PROCEDURAL MOTIONS** (Filed May 7, 1992)

I. FACTS AND PROCEDURE

Now before the court are a number of discovery and procedural motions in the above-entitled matter. The background of these motions is as follows. On April 22, 1991, the defendants, Governor Cecil D. Andrus and the State of Idaho (hereinafter collectively referred to as "Andrus"), filed an Amended Answer and Counterclaim against the United States of America, specifically the United States Department of Energy (hereinafter collectively referred to as "DOE"). The counterclaim seeks declaratory and injunctive relief for alleged violations of the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321, *et seq.*, and the Administrative Procedures Act ("APA"), 5 U.S.C. §§ 500-706. On November 13, 1991, Andrus served his first request for production of documents on DOE. Then, on November 19, 1991, Andrus served his second request for production of documents

and his first set of interrogatories. DOE did not object to these discovery requests or respond to them in any way within the time required by Rules 33 and 34 of the Federal Rules of Civil Procedure. Rather than respond to the interrogatories and requests for production, DOE chose to file a Motion to Limit Review to the Administrative Record and for Protective Order on January 7, 1992.

DOE argues that because the counterclaim seeks judicial review of administrative decisions, the court's review should be limited to the administrative record. Therefore, DOE argues that discovery relating to the counterclaim should not be permitted, and that the court should issue a protective order barring such discovery.

Andrus did not respond directly to the motion to limit review, but instead filed a Motion to Compel Discovery on January 24, 1992. Then, on February 24, 1992, DOE filed a Motion for Stay. The court has carefully reviewed the file and determined that all of these motions are now ripe for decision.

II. ANALYSIS

A. Motion to Limit Review and for Protective Order and Motion to Compel Discovery

It is well established that the court has broad discretion in dealing with discovery matters. "Control of discovery is committed to the sound discretion of the trial court . . . . " *Mayo v. Tri-Bell Industr.*, 787 F.2d 1007, 1012 (5th Cir. 1986). "The trial court's decision to allow or deny discovery is reviewable only for abuse of discretion." *Rae v. Union Bank*, 725 F.2d 478, 481 (9th Cir. 1984).

See also Dart Industr. Co. v. Westwood Chem. Co., 649 F.2d 646, 648 (9th Cir. 1980); *Data Disc, Inc. v. Systems Technology Assoc., Inc.*, 557 F.2d 1280, 1285 n.1 (9th Cir. 1977).

Judicial review of agency action under NEPA is controlled by the APA. Section 706 of the APA sets forth the scope of review:

> To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall –
>
> (1) compel agency action unlawfully withheld or unreasonably delayed; and
>
> (2) hold unlawful and set aside agency action, findings, and conclusions found to be –
>
> (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
>
> (B) contrary to constitutional right, power, privilege, or immunity;
>
> (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
>
> (D) without observance of procedure required by law;
>
> (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

> (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.
>
> In making the foregoing determinations, *the court shall review the whole record or those parts of it cited by a party,* and due account shall be taken of the rule of prejudicial error.

5 U.S.C.S. § 706 (Law. Co-op. 1989) (emphasis added). Thus, the court may review the *entire* record before DOE at the time the relevant decisions were made.

When NEPA was enacted, Congress declared a broad national commitment to protect and promote environmental quality. *See* 42 U.S.C. § 4331. NEPA is a procedural statute designed to ensure that federal agencies strive to implement the policies of the Act in all major federal programs. This is accomplished through mandatory procedures which require, among other things, the preparation of a detailed environmental impact statement ("EIS") for "major Federal actions significantly affecting the quality of the human environment . . . . " 42 U.S.C.S. § 4332(2)(C) (Law. Co-op. 1989). In deciding whether the preparation of an EIS is necessary, an agency first conducts an environmental assessment ("EA"). If the EA establishes that the proposed action will have no significant impact on the environment, the agency need not prepare an EIS.

In the case at hand, DOE conducted an EA of the proposal to transport spent nuclear fuel produced at the Fort St. Vrain Nuclear Generating Station in Colorado to the Idaho National Engineering Laboratory ("INEL"), and store it at INEL's Irradiated Fuel Storage Facility. The EA determined that the action would have no significant

impact on the quality of the human environment. Andrus challenges this decision in his counterclaim.

The court does not question the general rule that judicial review of agency decisions under NEPA is limited to the administrative record. Yet, the court rejects DOE's contention that Andrus cannot conduct discovery because DOE has designated what it considers to be the record. As noted above, the court is free to review the *entire* administrative record, not simply those items which DOE would prefer the court to review.

In *Thompson v. United States Department of Labor,* 885 F.2d 551 (9th Cir. 1989), the Ninth Circuit declared: "The whole administrative record, however, 'is not necessarily those documents that the *agency* has compiled and submitted as "the" administrative record.' . . . 'The "whole" administrative record, therefore, consists of all documents and materials directly or *indirectly* considered by agency decision-makers and includes evidence contrary to the agency's position.' " *Id.* at 555 (citations omitted) (emphasis in original). The Ninth Circuit has also acknowledged that discovery may be permitted in situations where the party challenging agency action charges that the administrative record is incomplete. *See Public Power Council v. Johnson,* 674 F.2d 791, 794 (9th Cir. 1982).

In addition, the court is not always limited to the administrative record. In *Animal Defense Council v. Hodel,* 840 F.2d 1432 (9th Cir. 1988), the Ninth Circuit Court of Appeals held that under certain circumstances the district court may direct its inquiry beyond the administrative record, and/or permit the party challenging the agency action to conduct discovery. *Id.* at 1436. The district court

may inquire outside the record when (1) it is necessary to explain the agency's action; (2) it appears the agency relied on materials not included in the record; (3) the record must be supplemented in order to explain technical terms or complex subject matters; and (4) when the plaintiffs make a strong showing of bad faith or improper behavior on the part of the agency. *Id.* at 1436-37.

The court has carefully reviewed the memoranda filed by the parties, as well as the cases cited on both sides. Based upon this review, the court finds that Andrus had made a strong showing that the administrative record designated by DOE is incomplete. The court is persuaded that the agency relied on, or at least considered, materials which have not been included in the record. The court is also convinced that there may be a great number of documents which are contrary to the agency's position and which were either directly or indirectly considered by DOE, but not included in the record. The court further finds that the discovery requests have been carefully designed to secure such information and documents.[1]

The court also finds Andrus's position to be particularly compelling because, in conducting its environmental assessment, DOE was required to assess whether the current proposed action would have a cumulatively significant impact on the environment when viewed in light

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[1] The court rejects DOE's conclusory claim that the discovery requests are overbroad and unduly burdensome. The court finds that DOE must comply with these requests as best as it can without exorbitant cost or effort.

of all of the other previous and proposed future shipments of nuclear waste to INEL from a variety of sources outside Idaho. *See Kleppe v. Sierra Club,* 427 U.S. 390, 410 (1976); *see also,* 40 C.F.R. §§ 1508.7 and 1508.25 (1991).

The *Kleppe* case is particularly applicable to the case at hand. In *Kleppe,* environmental organizations challenged the Department of the Interior's issuance of a series of leases for coal mining in a particular region. The Supreme Court declared:

> [W]hen several proposals for coal-related actions *that will have cumulative or synergistic environmental impact upon a region* are pending concurrently before an agency, their *environmental consequences must be considered together.* Only through *comprehensive consideration* of pending proposals can the agency evaluate different courses of action.

Kleppe v. Sierra Club, 427 U.S. at 410 (footnotes omitted) (emphasis added).

The court finds that the current proposal to ship nuclear waste from Colorado to Idaho, when viewed in light of all of the other previous and proposed future shipments from other sources, may have a cumulative impact on the environment. In addition, the law requires DOE to consider the cumulative impact of all of these shipments, not just those from the Fort St. Vrain Nuclear Generating Station in Colorado. The record designated by DOE is completely devoid of any documents or other materials relating to any of the other shipments to INEL. Therefore, the court holds that Andrus is entitled to pursue his requests to discover all of the information, documents, and materials generated by or submitted to DOE,

which were either directly or indirectly considered by DOE in its EA and in its decision that an EIS is not warranted.

The court also notes that it is quite concerned by the fact that in earlier proceedings which led to this court's order of May 7, 1991, the DOE represented that the storage facility at INEL was the *only* storage facility available which could accept the spent nuclear fuel from Fort St. Vrain. The court is of the opinion that DOE may have acted in bad faith by making this representation. As the court now knows, Public Service Company (which operates the Fort St. Vrain nuclear facility) applied to the Nuclear Regulatory Commission ("NRC") in June of 1990, to build an on-site storage facility at Fort St. Vrain. The NRC authorized the construction of such a facility on February 1, 1991. Construction began immediately, and it was completed in October of 1991. In November of 1991, the NRC issued a license to Public Service Company to operate the storage facility for 20 years.

The DOE should have been more forthcoming with the court with respect to the storage facility being constructed at Fort St. Vrain. These facts bolster Andrus's position that discovery is warranted to ensure that the full administrative record is before the court before any decision is made regarding the counterclaim.

Based on the preceding discussion, the court will grant Andrus's Motion to Compel Discovery. In addition, the court will deny DOE's Motion to Limit Review to the Administrative Record and for Protective Order to the extent that the motion attempts to limit review to the record which thus far has been specified by DOE.

B. DOE's Motion for Stay

In a related case,[2] DOE has been directed to reopen the NEPA process to consider comments from the Shoshone-Bannock Tribe. DOE intends to consider these comments, as well as comments from the State of Idaho, and will issue a revised EA in early May or June of 1992. Consequently, on February 24, 1992, DOE filed a Motion for Stay, asking the court to stay its ruling on the discovery dispute on the grounds that Andrus's counterclaim is now moot.

The court has carefully reviewed the record now before the court, including the memoranda filed by the parties and the cases cited in these memoranda. Based upon this review, the court holds that the Motion for Stay should be denied. Without indicating any opinion on the merits of the counterclaim, the court finds that Andrus's counterclaim would be *moot* only if DOE issues a revised EA which concludes that the proposed shipments from Fort St. Vrain will significantly affect the quality of the environment, and thereupon undertakes to prepare a formal EIS.

III. ORDER

Based on the foregoing, and the court being fully advised in the premises,

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[2] *Shoshone-Bannock Tribes v. DOE*, Civil No. 91-0436-E-EJL (D.Idaho, Nov. 1, 1991).

IT IS HEREBY ORDERED that the Motion to Limit Review to the Administrative Record and for Protective Order, filed January 7, 1992, should be, and is hereby, DENIED to the extent that the motion attempts to limit review to the record which thus far has been specified by DOE. The request for a protective order is also hereby DENIED.

IT IS FURTHER ORDERED that the Motion to Compel Discovery, filed January 24, 1992, should be, and is hereby, GRANTED. DOE must comply with these discovery requests within thirty (30) days of this order.

IT IS FURTHER ORDERED that the Motion for Stay, filed February 24, 1992, should be, and is hereby, DENIED.

IT IS FURTHER ORDERED that the Stipulation to Extend Time, filed March 9, 1992, should be, and is hereby, DENIED as being MOOT.

DATED this 6th day of May, 1992.

/s/ Harold L. Ryan
HAROLD L. RYAN
UNITED STATES
DISTRICT JUDGE